

United States District Court

NORTHERN

DISTRICT OF

CALIFORNIA
2009 JAN 26 P 2 11

UNITED STATES OF AMERICA

 RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

CRIMINAL COMPLAINT

V.

 ALBERT KE-JENG HU,
a/k/a Ke-Jeng Hu

(Name and Address of Defendant)

 SEALED BY ORDER
OF THE COURT

09-70057

PMT

CASE NUMBER:

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about, 2/2005 to 6/2007, in Santa Clara County in the Northern District of California defendant(s) did, (Track Statutory Language of Offense)

knowingly and intentionally cause money to be wired in foreign commerce in furtherance of an investment fraud scheme

in violation of Title 18 United States Code, Section(s) 1343
I further state that I am a(n) FBI Special Agent and that this complaint is based on the following
Official Title

facts:

See attached affidavit.

Maximum Penalties: 20 years imprisonment, \$250,000 fine, 3 years supervised release, \$100 special assessment fee.

No bail arrest warrant requested

APPROVED AS TO
FORM:
 Joseph Fazio - 1/26/09
ASSISTANT UNITED STATES ATTORNEY JOSEPH A. FAZIOLI
Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No

Sworn to before me and subscribed in my presence,

1/26/09
Date

at

San Jose, California
City and State

DOCUMENT NO.	CSA's INITIALS
1	e
DISTRICT COURT CRIMINAL CASE PROCESSING	

 Patricia V. Trumbull
United States Magistrate Judge

Name & Title of Judicial Officer

 Patricia V. Trumbull
Signature of Judicial Officer

AFFIDAVIT OF FBI SPECIAL AGENT GREGORY FINE
IN SUPPORT OF CRIMINAL COMPLAINT

I, Gregory S. Fine, a Special Agent with the Federal Bureau of Investigation ("FBI"),
being first duly sworn, hereby depose and state as follows:

INTRODUCTION

1. I am a Special Agent with the Federal Bureau of Investigation (FBI). I have been employed as a Special Agent since September 2006, and am presently assigned to the white collar crime squad in the San Jose Resident Agency Office of the San Francisco Division of the FBI. As a Special Agent, I am authorized to investigate crimes involving wire fraud, money laundering, mail fraud, securities fraud, and other complex crimes. I have successfully completed 18 weeks of criminal investigative training at the FBI Academy in Quantico, Virginia, which included training on investigating financial crime. Through my training and experience, as well as discussions with other agents, I have become knowledgeable in the methods employed to commit fraudulent crimes. The information set forth in this affidavit is based on my personal knowledge and that which has been provided to me by other agents with whom I have been working on this ongoing investigation.

2. This affidavit contains information necessary to establish probable cause in support of this Complaint. It is not intended to include every fact known to me or the Government. The information is based on my personal knowledge and observations during the investigation, information conveyed to me by other law enforcement and government officials, and my review of records, documents and other physical evidence obtained during this investigation. Except where specifically indicated, I have personally reviewed all of the records and the reports of interviews referred to in this affidavit.

3. As set forth below, there is probable cause to believe Albert Ke-Jeng Hu caused money to be wired in furtherance of a fraudulent high-yield investment scheme in violation of Title 18, United States Code, Sections 1343 (Wire Fraud).

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OVERVIEW

4. My investigation has revealed that the defendant, Albert Ke-Jeng Hu, has been involved in an investment fraud scheme involving hedge funds he administered from 2002 to 2008. Hu and others told potential investors that they were operating hedge funds under the names Asenqua Beta Fund and Fireside LS Fund out of locations in Sunnyvale, San Francisco and elsewhere in the Northern District of California. Hu's company was located in Sunnyvale, California. Hu enticed victims to invest by promising them rates of returns as high as 20-30% a year. Additionally, Hu and others made several false representations regarding entities that were supposedly affiliated with these hedge funds, such as a prominent law firm, a fund administrator, an independent auditing firm, and a chief financial officer (CFO). In reality, neither the law firm, the fund administrator, nor the CFO ever had any connection with Hu's hedge funds. Furthermore, the so-called "independent" auditing firm was a facade Hu fabricated to lure victim-investors to invest in his funds. Hu used the names of these entities to legitimize the hedge fund and give the perception that the hedge fund was secure.

5. Hu's materially false statements regarding his hedge funds and their affiliated entities caused victim-investors to wire substantial amounts to entities under his control. Documents obtained in the course of the investigation revealed that Hu caused the wiring of millions of dollars from victim-investors' bank accounts in the United States to bank accounts Hu held abroad.

FACTS SUPPORTING PROBABLE CAUSE

Details of the Scheme

Victim-Investor "F.L."

6. In September 2004, Hu approached victim "F.L.", a resident of Cupertino, California, regarding Hu's Asenqua Beta Fund. F.L. believed that Hu approached him because F.L. was a successful entrepreneur and venture capitalist in the Silicon Valley area of California, and because F.L. was well-known in the local Chinese-American community. Hu told F.L. that the Asenqua Beta Fund was closed to new investors, but that Hu was willing to make an exception for F.L. because of his status in the community. Hu showed F.L. purported historical

1 data regarding the returns achieved by the Asenqua Beta Fund. F.L. was very impressed that the
2 hedge fund had earned almost 50% returns for the first full year of its existence (2001) and
3 continued to earn annual returns over 30% from 2002 to 2003.

4 7. F.L. met with Hu several times before deciding to invest. During one of these
5 meetings in early 2005, Hu presented F.L. with the "audited" financial statements of the Asenqua
6 Beta Fund. Hu represented that these financial statements had been prepared by an independent
7 auditing firm called Castillo, Lyn, Cohen & Vijay, whose principal place of business was in San
8 Francisco, California. These audited financial statements contained a balance sheet, which
9 detailed the assets and liabilities of the Asenqua Beta Fund. According to the balance sheet, the
10 net assets for the hedge fund totaled \$140,870,552 as of December 31, 2004.

11 8. F.L. ultimately decided to invest with Hu in reliance upon his statements that his
12 hedge funds: (1) had a history of high returns; and (2) were affiliated with an established and
13 independent auditing firm which had conducted an audit of the fund. F.L. invested \$100,000 in
14 the Asenqua Beta Fund on or about February 8, 2005. F.L. later invested an additional \$100,000
15 on or about February 23, 2005; \$250,000 on or about July 6, 2005; \$300,000 on or about
16 December 20, 2005; and \$250,000 on or about May 13, 2007. As a result of Hu's false
17 representations, F.L. ultimately invested a total of \$1,000,000 in the Asenqua Beta Fund. In each
18 instance F.L. wired money from one of his accounts to a bank account Hu controlled.
19 Specifically, the December 20, 2005 wire of \$300,000 and the May 13, 2007 wire of \$250,000
20 were wired from F.L.'s bank account in the United States to a bank account in the name of
21 Fireside Capital Management at Credit Suisse Bank in Singapore.

22 9. To memorialize F.L.'s investment, Hu provided F.L. with a subscription booklet
23 detailing the agreement between parties and, on two occasions, receipts. Hu signed these
24 subscription booklet and receipts.

25 10. Subsequent to F.L.'s initial investment, F.L. began to receive what Hu claimed
26 were accurate quarterly statements from the Asenqua Beta Fund. Hu or his assistant, Linda
27 Danesh, usually hand-delivered the statements to F.L. The quarterly statements purported to
28 confirm F.L.'s investments and showed the returns he was earning. The final statement that F.L.

1 received sometime around December 31, 2007 reported that F.L.'s principal investment of
2 \$1,000,000 had grown to \$1,711,567.52. The quarterly statements contained what Hu
3 represented was both his signature (as the fund's chief investment officer) and the signature of an
4 individual named Tony Pollace (as the fund's chief financial officer.)

5 11. On October 25, 2005, Hu contacted F.L. to tell him that the Asenqua Beta Fund
6 was changing its name to the Fireside LS Fund and would now be managed under the company
7 name Fireside Capital Management. Hu explained that the Securities and Exchange Commission
8 (SEC) had changed its regulations, which would now make it more expensive for the hedge fund
9 to be managed in the United States. This additional cost would reduce the performance of the
10 hedge fund. For this reason, Hu had started Fireside Capital Management, which was located in
11 Singapore.

12 12. Shortly after this conversation, F.L. signed a fund withdrawal agreement with Hu,
13 related to a potential transfer of \$562,331.82 from the Asenqua Beta Fund to the Fireside LS
14 Fund. The \$562,331.82 represented F.L.'s \$450,000 principal investment at the time, plus
15 \$112,331.82 in supposed earnings reflected on the quarterly statements Hu had provided F.L.

16 13. Around this time, Hu represented to F.L. that Hu could not simply transfer F.L.'s
17 investment from one hedge fund to another. Hu stated that in order to perform the transfer, as an
18 administrative matter F.L. needed first to open an account with the Fireside LS Fund. Hu told
19 F.L. that he would have to invest an additional amount directly into the Fireside LS Fund in order
20 to open this new account. In part as a result of Hu's representations regarding this supposed
21 administrative requirement of additional funding, F.L. wired an additional \$300,000 to the
22 Fireside LS Fund on December 20, 2005.

23 14. In May 2007, Hu contacted F.L. regarding his investment in the Fireside LS Fund.
24 During the course of the conversation, Hu falsely stated that F.L. was the only investor who had
25 not invested \$1,000,000 in the hedge fund. In fact, many investors had invested amounts less
26 than \$1,000,000 in Fireside LS hedge fund. In part due to this false statement, F.L. wired Hu an
27 additional \$250,000 on May 13, 2007.

28 15. In July 2007, F.L. requested that his investment in the Fireside LS Fund be

1 redeemed because he was planning on retiring and wanted to purchase a retirement house. Hu
2 informed F.L. that it would take some time to liquidate F.L.'s investment in the hedge fund. Hu
3 explained that it was important to liquidate F.L.'s investment at the proper time or it could affect
4 other investors' money. After several months of asking Hu for his money, F.L. met Hu and both
5 signed a withdrawal form dated November 26, 2007. Hu promised F.L. that his money would be
6 returned soon based upon the signed withdrawal form, but never gave F.L. a specific time frame.
7 Eventually, Hu stopped answering F.L.'s phone calls and emails and has to date failed to return
8 any of F.L.'s money.

9 Victim-Investor "J.V."

10 16. Sometime during the course of F.L.'s investment, F.L. introduced victim "J.V." to
11 Hu. J.V. was a resident of Palo Alto, California, a successful entrepreneur in Silicon Valley, and
12 is currently the chief executive officer of a technology company in Sunnyvale, California. J.V.
13 considered F.L. to be a professional investor and trusted his opinion.

14 17. On more than one occasion, J.V. met with Hu in at his conference room at Hu's
15 Sunnyvale, California business location. In these meetings, Hu presented the Fireside LS Fund
16 to J.V. as a potential vehicle for investment. According to Hu, the hedge fund: (1) had
17 historically provided investors with a 20 to 30% annual return; and (2) was affiliated with an
18 established and independent auditing firm, law firm, and fund administrator

19 18. Based upon a combination of Hu's representations regarding his hedge fund's
20 high rates of return, their connection with reputable entities, and J.V.'s trust in F.L., on or about
21 April 30, 2007, J.V. wired \$2,000,000 from his bank account in the United States to a bank
22 account held by Fireside Capital Management in Singapore. To memorialize his \$2,000,000
23 investment in the Fireside LS Fund, J.V. and Hu signed a subscription agreement and Hu
24 provided J.V. with a private placement memorandum (PPM).

25 19. The PPM Hu provided J.V. referenced Castillo, Lyn, Cohen & Vijay as the
26 auditors for the Fireside LS Fund and GlobeOp Financial Services as the fund administrator.
27 Additionally, both the PPM and subscription agreement referenced the law firm Pillsbury,
28 Winthrop, Shaw, and Pittman as legal counsel to the Fireside LS Fund.

1 20. Subsequent to J.V.'s initial investment, J.V. began to receive what Hu claimed
2 were accurate quarterly statements from the Fireside LS Fund. Hu or his assistant, Linda
3 Danesh, usually hand-delivered these statements to J.V. Hu represented that these quarterly
4 statements contained both his signature (as the fund's chief investment officer) and the signature
5 of Tony Pollace (as the fund's chief financial officer.)

6 21. Immediately after receiving his first quarterly statement, J.V. began to have some
7 suspicions about the hedge fund. The quarterly statements did not seem as professional as J.V.
8 was expecting. A short while after J.V.'s suspicions began, J.V. met F.L. at a retreat for Credit
9 Suisse clients at the Ritz Carlton in Half Moon Bay, California. F.L. informed J.V. that he was
10 also becoming concerned about his investment and planned to ask for his money to be returned.
11 In the months following, J.V. learned that F.L. was having difficulty withdrawing his money.

12 22. Based on his own suspicions and those of F.L., in March 2008, J.V. decided to
13 request a full withdrawal of his investment. J.V. requested this withdrawal through emails to Hu.
14 Ultimately both Hu and J.V. signed a withdrawal form detailing that J.V.'s money would be
15 returned to him. In addition, J.V. requested a K-1 statement for tax purposes. Despite J.V.'s
16 requests and these signed documents, J.V. has never received any money from Hu nor has Hu
17 provided him with a K-1 statement.

18 Fraudulent Nature of the Scheme

19 23. There is probable cause to believe that Hu fabricated the existence of a so-called
20 independent auditing firm – "Castillo, Lyn, Cohen & Vijay" to lure victim-investors to invest in
21 his Asenqua Beta Fund and Fireside LS Fund. Hu manufactured and supplied to J.V. and F.L.
22 investment documents which falsely reported that Castillo, Lyn, Cohen & Vijay was an
23 independent auditor for the Asenqua Beta Fund and the Fireside LS Fund. Several of the
24 documents Hu provided J.V. and F.L. also listed the address for the auditing firm as One
25 Embarcadero Center, Suite 500, San Francisco, California. This property is leased from a
26 company by the name of Regus.

27 24. According to representatives from Regus, as well as corresponding Regus
28 documents, an entity named Castillo, Lyn, Cohen & Vijay leased this One Embarcadero Center

1 property from October 2004 to June 2007. However, this entity has never been physically
2 located at this address. Instead, "Castillo, Lyn, Cohen & Vijay" purchased a virtual office from
3 Regus. The virtual office product enabled the company to have telephone answering in the
4 company's name, fax and mail handling, and 16 hours of office usage. Hu personally signed the
5 agreement between Regus and Castillo, Lyn, Cohen & Vijay for the virtual office product and
6 paid for this product with his personal credit card. Additionally, the contact person on this
7 agreement was Danesh, referenced above as Hu's assistant. Finally, the physical address of the
8 firm Castillo, Lyn, Cohen & Vijay used on the Regus invoices was Danesh's home address in Los
9 Altos, California.

10 25. There is also probable cause to conclude that Hu falsely claimed that a prominent
11 hedge fund administrator, a law firm, and a CFO were affiliated with his hedge funds when in
12 fact no such connection existed. Hu provided victim-investors with a PPM investment document
13 listing GlobeOp Financial Services as the fund administrator for the Fireside LS Fund. GlobeOp
14 Financial Services was a popular and well-known fund administrator for several other hedge
15 funds at the time. Representatives from GlobeOp Financial Services have confirmed that they
16 have never been the fund administrator for the Fireside LS Fund or the Asenqua Beta Fund.

17 26. The PPM and subscription agreement for the Fireside LS Fund listed the law firm
18 Pillsbury, Winthrop, Shaw, and Pittman as the legal representation for the fund. Representatives
19 from this law firm have confirmed that they never represented Hu, Fireside LS Fund, or the
20 Asenqua Beta Fund. At one point, J.V.'s personal attorney contacted Pillsbury, Winthrop, Shaw,
21 and Pittman to arrange a settlement for her client, but was surprised to find out that the law firm
22 did not represent Hu or the Fireside LS Fund.

23 27. As discussed above, Hu provided to F.L. and J.V. quarterly financial statements of
24 his hedge funds that were purportedly signed off by a chief financial officer of those funds named
25 Tony Pollace. There is probable cause to believe that this signature was forged. An individual
26 named Tony Pollace was in fact at one time chief financial officer for a semi-conductor company
27 Hu once owned called Apex. However, Apex was shut down in the early 2000's and Pollace
28 and Hu parted ways at that time. The signed quarterly statements for the Asenqua Beta Fund and

1 Fireside LS Fund that Hu provided F.L. and J.V. contained the signature "Tony Pollace."
2 Pollace's full name is actually Anthony Pollace, and a check of California Department of Motor
3 Vehicles records confirmed that Pollace signature contains his full first name. In an interview
4 with the FBI, Pollace emphatically stated that he had not worked for Hu since his employment at
5 Apex, that he was not affiliated with the Asenqua Beta or Fireside LS Funds, and that the "Tony
6 Pollace" signature on the quarterly statements Hu provided to F.L. and J.V. was a forgery.

7 28. F.L.'s May 13, 2007 investment of \$250,000 by F.L. in the Fireside LS Fund was
8 caused in part by Hu's false statement that F.L. was the only investor in the fund who had not
9 invested at least \$1,000,000. In fact, my investigation has determined that at the time Hu made
10 this statement to F.L. several other victim-investors of the Fireside LS Fund had invested less
11 than \$1,000,000.


12 29. My investigation has confirmed that the false statements Hu made to F.L. and J.V.
13 caused them to wire money from the United States to Hu in Singapore as detailed above.

14 30. Hu left the United States in June of 2008 and has not returned, which corresponds
15 to the time period that investors began having difficulty contacting him. Law enforcement
16 authorities in Singapore have confirmed that Hu closed his bank accounts in Singapore around
17 December 2008 and transferred some of the money to Hong Kong and some of the money to
18 Taiwan. A victim, residing in Taiwan, was able to arrange a meeting with Hu in December 2008
19 in Hong Kong. During the meeting, the victim asked Hu what he would do if the victim went
20 through legal means to obtain the reimbursement of his lost investment. Hu replied that the
21 victim could try and catch him. The victim believed this meant that Hu would hide if the victim
22 started a legal proceeding. There is probable cause to believe that Hu has no intention of
23 returning investors' money despite the quarterly statements he supplied victims showing that the
24 money had earned significant returns and despite the signed agreements that Hu supplied victims
25 stating that the money would be returned.

26 CONCLUSION

27 31. Based on the above information contained in this affidavit, I believe there is
28 probable cause to believe that defendant Albert Ke-Jeng Hu executed a scheme to defraud victim

1 investors and that, in furtherance of the scheme, Hu caused money to be wired from the United
2 States to Singapore, in violation of Title 18, United States Code, Section 1343.

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4 
5 Gregory S. Fine
6 Special Agent
7 Federal Bureau of Investigation

8 Sworn to and subscribed before me
9 on this 26 day of January, 2009

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11 PATRICIA V. TRUMBULL
12 United States Magistrate Judge
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